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**Pacific Rivers Council**  
*Mary Scurlock, Senior Policy Analyst*  
917 SW Oak Street, #403  
Portland, OR 97205  
v.503-228-3555/f. 503-228-3556

**BY EMAIL AND U.S. MAIL**

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Sally Butts  
Project Manager  
United States Fish & Wildlife Service  
510 Desmond Drive, SE, Suite 102  
Lacey, WA 98503-1263  
Sally\_Butts@fws.gov

Laura Hamilton  
Project Manager  
NOAA – National Marine Fisheries Service  
510 Desmond Drive, SE, Suite 103  
Lacey, WA 98503  
Laura.Hamilton@noaa.gov

**Re: Comments of Pacific Rivers Council on the Final Environmental Impact Statement and HCP for Washington Forest Practices, and Response to Comments**

Dear FWS and NMFS:

Please accept these comments into the record for the Proposed Issuance of Multiple Species Incidental Take Permits or 4(d) Rules for the Washington State Forest Practices Habitat Conservation Plan. PRC finds that the FEIS and Final HCP do not fully disclose the environmental impacts of the proposed action, nor provide an adequate basis to find that the plan will prevent significant impairment of the survival and recovery of the seven covered amphibians or to meet other requirements of the Endangered Species Act with respect to other covered aquatic species.

To the extent that additional analysis relevant to this proposal's impact on the covered species and their habitats in light of ESA decision criteria is provided in the Biological Opinion, we contend that such analysis should be made available during the NEPA process prior to a final decision.

We are extremely encouraged by CMER's having forwarded recommendations to the FPB based on the Type N Demarcation Study and the DFC Study. However, it remains to be seen

whether the Board will implement rules changes on the basis of this adaptive management information, and whether other non-rule tool studies will succeed in reaching the Board.

## **I. ADEQUACY OF AMPHIBIAN CONSERVATION MEASURES, OBJECTIVES, TARGETS and ADAPTIVE MANAGEMENT**

We appreciate the extent to which the risks and uncertainties associated with the riparian conservation strategy are intended to be evaluated and addressed through the adaptive management program, and are encouraged by the progress of the Type N Demarcation Study to the Forest Practices Board. If rules are enacted that effectively extend the application of riparian measures to the actual extent of perennality and if riparian vegetation consistent with higher DFC targets is left in buffer areas, amphibians will unquestionably benefit. However, such changes will not address the risk posed by the limited protection provided to non-perennial streams, and by management activities within and outside of non-functional riparian areas.

The Services indicate that the Draft HCP has been modified to reflect that Resource Objectives are required elements of the plan (*See e.g.* Final FPHCP Section 4a-4, page 173), but this does not alleviate our concerns about the adequacy of the performance metrics to meet these objectives, and does not expressly bind the State to compliance with the performance targets. Although we agree it is logical for landowners to be bound and immunized primarily by compliance with specified management practices, there should also be accountability for the resulting condition of the resource – and it seems logical that the State should be the accountable party. We continue to have particular concerns about accountability and the efficacy of adaptive management where both general resource objectives and performance metrics have yet to be developed, as with the Amphibian-specific objectives and targets per Schedule L-2.

We note that the Services will require their concurrence for any “future substantive changes” by the FPB to resource objectives, performance targets and research and monitoring priorities. Final FPHCP at 173.

## **II. SOME KEY AMPHIBIAN ISSUES DEFERRED UNTIL BIOLOGICAL OPINION**

Responses to several concerns we raised with regard to the plan’s impacts on amphibians were deferred to the not-yet-available analysis contained in the Services’ ESA Section 7 Biological Opinion. These include:

1. The impacts of management on portions of Type Np streams and most seasonal, nonfishbearing Type N streams. (Response to Comments at 3-114). No additional analysis has been offered to demonstrate that these impacts are consistent with permit issuance; the Services simply reiterate that “the majority of habitat needed by covered amphibians is addressed by the prescriptions” in the Plan. Id. and 3-117.

2. The analytical framework, including specific habitat or population targets, necessary for determining either the "long term viability" of amphibians (the plan's stated goal) or whether the proposed action causes "jeopardy" to these species within the meaning of the ESA. Response to Comments at 3-118; 3-1.
3. Quantification of take. 3-1 and 3-2; 3.1.5.
4. Addressing unlisted species as if listed. 3.35.

We maintain that the analysis required for the public to determine whether this decision meets the applicable decision criteria – which in this case are contained in the Endangered Species Act Sections 10 and 7 - is required by law to be provided in the DEIS and FEIS.

We reiterate our concerns with the extent to which performance targets for amphibians are neither specified nor demonstrated to be adequate to meet biological objectives. Further, we are still concerned that the Services may believe "no jeopardy" and consistency with recovery requires only maintenance of the current abundance and distribution of amphibians, although both are likely much reduced from historic numbers due to the persistent effects of timber harvest and associated management on essentially all of the covered lands. We direct your attention to a recent journal article by D. Ashton, S. Marks and H. Welsh entitled "Evidence of continued effects from timber harvesting on lotic amphibians in redwood forests of northwestern California," 221 *Forest Ecology and Management* 183-93 (2006) (finding reduced richness and abundance in mid-seral streams versus late-seral and greater fine sediments)(enclosed)

We emphasize that the fact a species is not listed under the ESA is not enough to conclude that they are not at risk of extinction and/or there are viable populations distributed throughout their range – as implied the response to comments at page 3-35.

## **II. IMPLEMENTATION AGREEMENT**

### **➤ Changes made between Draft and Final Related to Resource Objectives**

**Performance Targets and Resource Objectives.** We note that according to the Services' response to comments, resource objectives identified in Schedule L-1 (App B) are now included in the HCP as "required elements." (FEIS at 3-118). However, it is unclear where in the final HCP changes were made to reflect that objectives are "required elements." Section 4a-4 does refer to Schedule L-1 (which includes the resource objectives) as the "foundation for the AM program." However, it also indicates that resource objectives may be changed "at the discretion of the Forest Practices Board," with the Services' concurrence. Performance targets, as well, may change over time, and despite the reference to the targets in 4a-4, the Services did not indicate that the performance targets are "required elements" of the HCP in the responses to comments.

### III. ROADS

PRC, primarily via the comments of C. Frissell on the DEIS, raised issues related to the biological basis for the plan's sediment reduction objectives, the lack of watershed-level road density caps and density reduction targets, the failure of the plan to adequately recognize and address resource risks posed by orphan roads, and the failure of the DEIS to adequately quantify the impacts of the small landowner exemptions.

We find that our level of concern over these issues has not been ameliorated in the FEIS and response to comments.

***Biological Basis for Sediment Reduction Objectives:*** We reiterate our concern over the lack of basis to find that sediment delivery levels anticipated under the proposed plan are sufficient to ensure the survival and recovery of the species of concern.

***Orphan Roads:*** The response to comments points to WAC 222-24-052(4)(a) requiring landowners to conduct an inventory and assessment of orphan roads as part of the RMAP process by July 2006, at which time "stakeholders can more realistically discuss orphan roads, whether or not they are a problem and if so, how to resolve the issue." (Responses to Public Comments at 3-82.) This response confirms our view that the risks posed by orphan roads are effectively outside the purview of this HCP. The extent to which identification of problem roads and remediation will occur is highly reliant on self-policing by landowners. Further, we are not optimistic that once federal assurances are granted for the mandatory measures in the rules, there will be adequate incentives for landowners to make further road restoration commitments. The HCP would appear to immunize landowners from harm and legal liability arising from these roads under Section 9 of the ESA; we recognize that CWA liability may still attach.

We further note that the Adaptive Management program does not contain a component specifically designed to ensure that risks posed by orphan roads are addressed. We maintain that these risks are substantial, largely because in many watersheds such roads may comprise a large proportion of the total road network and because of their poor location (i.e. on high risk slopes) and design (e.g. sidecast; inboard ditches etc.). A cursory review of completed watershed analyses reveals that unused roads do, in fact, comprise a large part of the total road network and that unused roads are associated with mass wasting events.

***Adaptive Management Objectives and Targets for Roads:*** The adaptive management monitoring emphasis for roads will not lead to correction of road-related harm caused by inadequacies in prescriptions or in performance targets before the harm is done. Sub-basin scale monitoring, for example, is a long-term program based on the monitoring of sample areas statewide. The Road Site-Scale Effectiveness monitoring project will evaluate treatments that fail to meet performance targets on short timeframe of 2-4 years when it gets up and running, but the monitoring plan itself is not yet completed, and is unclear when "BMP investigations" will be initiated as a result of this monitoring or whether this site-level data will be translated into BMP modifications.

We note that the Roads Monitoring Program "assumes that performance targets are correct" and does not contain measures intended to test the appropriateness of the performance targets to meet objectives. It is not appropriate to accept that these performance standards are ecologically, hydrologically, or biologically correct.

For example, the performance target for the ratio of road length delivering to streams /Total stream length for existing roads is not to exceed 0.15-0.25 for the Coast/West of Cascade Crest. We submit that a separate target should be set for decommissioned roads, at 2-5% hydrologic connectivity; an appropriate and attainable target for upgraded existing roads on the westside would be on the order of 10-20% hydrologic connectivity. (Bill Weaver, Pacific Watershed Associates, Conference Presentation "Forest Roads: Advancements in Science and Technology," Eugene Oregon, December 14, 2005, *see also* "Upslope Assessment and Restoration Practices," in Flosi et. al., California Salmonid Stream Habitat Restoration Manual, (California Department of Fish and Game, [www.dfg.ca.gov/nafwb/manual.html](http://www.dfg.ca.gov/nafwb/manual.html)).

We re-state our recommendation that failing to cap or reduce road densities to relative low levels is a serious flaw in the plan.

***Small Landowner Exemptions:*** We renew our contention that the actual level of conservation that can be expected from those small landowners subject to RMAP and other exemptions should be more fully evaluated at the appropriate scale. Our concerns remain despite the Services reassurances that these exemptions are not intended to lead to lower levels of resource protection. It is clear that progress toward addressing road-related resource risks will continue to be limited by the public funds available.

#### **IV. RESOURCE OBJECTIVES/PERFORMANCE TARGETS**

We note that Section 10 of the Implementation Agreement has been modified to incorporate a requirement that the Services may unilaterally determine what actions are appropriate in response to adaptive management information/changed circumstances to meet Resource Objectives if the state does not act in a reasonable time, and that the Services will suspend or revoke the ITP if such demands are not met. However, it remains unclear what decision criteria or feedback mechanisms will actually prompt the Services to exercise their authority under Section 10.2. The Services have not committed themselves to requiring all changes necessary to ensure the HCP will minimize and mitigate effects to the maximum extent practicable.

#### **V. EFFECTS ANALYSIS**

We remain concerned about the adequacy and rigor of the effects analysis. We add a sixth "unfounded assumption" to the list of five mentioned on our comments dated May, 2005:

That no impacts occur from activities in riparian areas, including sediment from yarding corridors and pre-existing roads, thus overstating the functionality of riparian areas.

Furthermore, in response to our assertion that the removal of large wood resources could impede amphibian recovery to a degree great enough to cause jeopardy, the Services replied that "the issuance criteria are much broader and more complex than one specific habitat element." (FEIS at 3-114 to 3-115). We do not dispute that many habitat elements must be analyzed when evaluating whether the HCP will cause jeopardy. Nevertheless, one habitat element may be so ecologically critical to species' survival and recovery that serious interference with that element could cause jeopardy.

Thank you for your consideration,

Mary Scurlock  
Senior Policy Analyst

cc: *by Email to NEPA.comments@noaa.gov*